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EXAMINER

FABER, DAVID

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/848,705	<b>Applicant(s)</b> WEIGHT, CHRISTOPHER F.	
	<b>Examiner</b> DAVID FABER	<b>Art Unit</b> 2178	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4, 7-20, 22-24 and 39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7-20, 22-24 and 39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This office action is in response to the Request for Continued Examination filed on 16 March 2009.
2. Claims 1, 12, 20, and 39 have been amended.
3. The rejection of Claims 1, 3-4, 7-20, and 22-24 under 35 U.S.C. 103(a) as being unpatentable over Fields et al, in further view of Matsumoto et al. (hereinafter Matsumoto), in further view of Runge et al in further view of Wildfire has been withdrawn as necessitated by the amendment. The rejection of Claim 39 under 35 U.S.C. 103(a) as being unpatentable over Fields et al, in further view of Matsumoto et al. (hereinafter Matsumoto), in further view of Wildfire has been withdrawn as necessitated by the amendment.
4. Claims 1-4, 7-20, 22-24, and 39 pending. Claims 1, 12, 20, and, 39 are independent claims.

### ***Specification***

5. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The phrase "computer-readable memory/memories" is not found to have proper antecedent basis in the specification; however it is necessary to use this terminology in order to properly define the claim within the boundaries of statutory subject matter. In order to overcome the object, an amendment to the specification is necessary constituting a non-exhaustive statement of what the

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“computer-readable memory/memories” would be as it would have been known to one of ordinary skill in the art at the time of the invention, in order to verify that the term “computer-readable memory/memories” could not be taken in the context of non-statutory subject matter.

### ***Claim Rejections - 35 USC § 101***

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 11, 19, and 24 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

**. For your reference, below is a section from MPEP 2106 :**

(a) Functional Descriptive Material: “Data Structures” Representing Descriptive Material Per Se or Computer Programs Representing Computer Listings Per Se  
Data structures not claimed as embodied in computer-readable media are descriptive material per se and are not statutory because they are not capable of causing functional change in the computer. See, e.g., *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention which permit the data structure's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory.

Similarly, computer programs claimed as computer listings per se, i.e., the descriptions or expressions of the programs, are not physical “things.” They are neither computer components nor statutory processes, as they are not “acts” being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer which permit the computer program's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. Accordingly, it is important to distinguish claims that define descriptive material per se from claims that define statutory inventions.

Computer programs are often recited as part of a claim. Office personnel should

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determine whether the computer program is being claimed as part of an otherwise statutory manufacture or machine. In such a case, the claim remains statutory irrespective of the fact that a computer program is included in the claim. The same result occurs when a computer program is used in a computerized process where the computer executes the instructions set forth in the computer program. Only when the claimed invention taken as a whole is directed to a mere program listing, i.e., to only its description or expression, is it descriptive material per se and hence nonstatutory.

**Since a computer program is merely a set of instructions capable of being executed by a computer, the computer program itself is not a process and Office personnel should treat a claim for a computer program, without the computer-readable medium needed to realize the computer program's functionality, as nonstatutory functional descriptive material. When a computer program is claimed in a process where the computer is executing the computer program's instructions, Office personnel should treat the claim as a process claim. See paragraph IV.B.2(b), below. When a computer program is recited in conjunction with a physical structure, such as a computer memory, Office personnel should treat the claim as a product claim.**

8. Claims 11, 19, and 24 disclose a computer readable memory/memories and a processor; however, the specification and claims themselves as written fail to disclose the memory and the processor as a form of hardware; thus, the claims are viewed as software in view of data structures. This is clearly not a series of steps or acts to be a process (i.e. a signal) nor are they a combination of chemical compounds to be a composition of matter. As such, they fail to fall within a statutory category. They are, at best, functional descriptive material per se. Thus, the claims appear to be claiming "software systems" i.e. systems without hardware indication, which is a computer program per se and appear non-statutory.

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-4, 8, 10-17, 19-20, 22-24, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fields et al. (hereinafter Fields), U.S. Patent No. 6,128,655 issued October 2000, in view of Lazaridis et al. (hereinafter Lazaridis), U.S. PGPub 20030026231 published 2/6/2003, and in further view of Wildfire ("FTP Tutorial: Using FTP Explorer") published early as of 16 December 2000, pages 1-5.

As per independent claim 1, Fields discloses a method comprising:

- retrieving content from a plurality of content providers, wherein the retrieved content is to be displayed in at least one Web page (column 2 lines 36-51: Fields teaches a host Website accepting (retrieving) new content from a plurality of Web content provider locations, the content retrieved intended to be ultimately reformatted as necessary and displayed on a Web page )
- rejecting particular content if the particular content format is not valid (column 10 lines 27-32: Fields teaches rejecting content if content portions do not match the specific policy for a provider's content format (i.e. if said policy dictates a publishers ads are not to be passed through, said ad content is deemed invalid, and is rejected, or at the very least, the ad is edited out of the content)

Fields teaches a host enacting a "filter policy" (i.e. a schema file) for a particular Web content provider's submission format for parsing specific content (i.e. validating licensing, accepting specific ads, etc.) (Fields column 10 lines 23-37). Fields does not

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specifically teach verifying via comparison of a data structure of the retrieved content with a data structure defined in a schema file. However, Fields teaches an agreed on set of tags, said tags can be special embedded tags identifying content areas. Fields also teaches said tags can be formalized as an XML document type definition (DTD) (Fields column 12 lines 30-44). Since a DTD can be interpreted as a form of schema file used for defining tags, etc. (i.e. data structures) as explained above, it would have been obvious to one of ordinary skill in the art at the time of the invention to apply said DTD as a part of Fields's filter policy for verifying the format of retrieved content, providing the benefit of a well formed and concise final document .

Furthermore, Fields teaches if a host Web site deems content is valid via adherence to its specific policy, said content is reformatted and displayed in a Web site accordingly (e.g. ad banners, etc) (see Fields column 8 lines 45-55, also ad banner item 313 – Figure 4B). However, Fields fails to specifically disclose the media content comprising actual media content, scheduling information, and contact information associated with the actual media content, submitting the media content to a media content database; periodically searching the media content database for a media content matching a display criteria; extracting the matching media content from the media content database; scheduling the matching media content to be displayed, the scheduling comprising; a scheduled time for the display of matching media content, a scheduled priority for the display of matching media content within a timeslice, and a scheduled locale for the display of matching media content, wherein the scheduled locale indicates the country or geographic region in which the content is to be displayed.

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On the other hand, Lazaridis discloses the Proxy Content Server (database) receiving information from Information Sources. (Thus, submitting content to the database) The Proxy Content Server stores information received from the information source to one of a plurality of channels (database) and automatically transmits the information from a selected channel to the mobile device of the a user. (Doing so, searching and finding the information and extracting the information from the database) In addition, information stored in Proxy Content Server is monitored for changes/updates (Abstract, Paragraph 0018,0020-0022, 0055) Furthermore, Lazaridis discloses retrieving advertising content is combined with rules regarding how often to use the advertising, which content the advertising applies to, and time parameters regarding when to display the ads. In addition, advertising content is sent based on the geographical location, time of day, user command, and any other criteria such as level/weight of importance (i.e. time sensitive (priority) content that is sent only during certain times), or user/advertiser preferences. (Lazaridis Paragraph's 0019, 0021, 0022, 0024,0034, 0049, 0055 0056, 0059, 0060) In addition, Lazaridis discloses the advertising content contains information relating to the identify of an advertiser such as a location sensitive address ( a form of contact information)

It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to have modified Fields with Lazaridis' method of pushing information to a mobile device since it would have provided the benefit of a method of providing information so the device user has a consistent and transparent experience of receiving both information content and advertising.



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Fields, and Lazaridis fail to specifically publish the matching media content in a file folder. However, Wildfire discloses the ability to publish files onto the web by placing the files into a folder of the user's choice using a software application. It would have been obvious to one of ordinary skill in the art at the time of the invention to apply Wildfire to Fields, providing Fields the benefit of publishing files onto a web server and kept in a customized organized fashion. Furthermore, Fields, Lazaridis, and Wildfire fail to specifically disclose the file folder comprising the scheduled date and time. However, Wildfire discloses the ability for the user to name a created folder or rename a existing folder. Therefore, it would have been obvious to one ordinary skill in art to name the folder based on the content/files or information associated with the content/files residing within the folder since it would have provided the benefit of indicating to the user what folder contains or is about without the user wasting additional time searching through the folder to determine the contents of the folder. Therefore, the user can name the folder based on the scheduled name and time of associated files stored in the folder. Thus, in conjunction with Fields, Lazaridis, and Wildfire, the cited references discloses the ability for the matching media content to be displayed at its scheduled time wherein the content is published into a folder that is named by the user to correspond to the content's scheduled data and time to be displayed.

As per dependent claim 3, Fields teaches automatically updating content on a Web page, which involves replacing (deleting the old content) with new content (Fields column 2 lines 52-54).

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As per dependent claim 4, based on the rejection of Claim 1 and the rationale incorporated, Lazaridis discloses advertising content is combined with rules (“attributes”) regarding time parameters regarding when to display the ads. (Paragraph 0019)

As per dependent claim 8, Fields discloses wherein the media content is defined in an extensible markup language (XML) file. (Col 7, lines 57-62; Col 12, lines 4-9)

As per dependent claim 10, based on the rejection of Claim 1 and the rationale incorporated, Lazaridis discloses advertising content is combined with rules (“attributes”) regarding time parameters regarding when to display the ads. (Paragraph 0019)

As per dependent claim 11, Claim 11 recites similar limitations as in Claim 1, and is rejected under similar rationale. Furthermore, Fields discloses a memory (FIG 7, item 726)

As per dependent claim 12, Claim 12 recites similar limitations as in Claim 1, and is rejected under similar rationale. Furthermore, Fields discloses if the content from the content provider is new or not. (Col 6, line 64 - Col 7, line 15; Col 7 lines 32-65)

As per dependent claims 13, 14, 15, Claims 13, 14, 15 incorporate substantially similar subject matter as claimed in claims 8, and 1, and are rejected along the same rationale.

As per dependent claims 16, 17, 19, Claims 16, 17, 19 incorporate substantially similar subject matter as claimed in claims 1, 3, 11, respectively, and are rejected along the same rationale.

As per independent claim 20, Claim 20 recites similar limitations as in Claim 1, and is rejected under similar rationale.

As per dependent claims 22, 23, 24, Claims 22, 23, 24 incorporate substantially similar subject matter as claimed in claims 1, 1, 11, respectively, and are rejected along the same rationale.

As per independent claim 39, Claim 39 recites similar limitations as in Claim 1, and is rejected under similar rationale. Fields and Lazaridis fail to specifically creating a multi-level directory structure associated with the scheduled time. However, Wildfire discloses, using a software application, the ability to create a folder/directory within the initial directory (such as within the “/pub” folder) to publish files in that results in a multi-level directory structure. (Pages 2-3) It would have been obvious to one of ordinary skill in the art at the time of the invention to apply Wildfire to Fields, providing Fields the benefit of creating folders/directories in order to keep files in a customized organized fashion with a simple ease of use. Furthermore, Fields, Lazaridis, and Wildfire fail to specifically disclose the directories associated with the scheduled time. However, Wildfire discloses the ability for the user to name a created folder or rename an existing folder. Therefore, it would have been obvious to one ordinary skill in art to name the folder based on the content/files or information associated with the content/files residing within the folder since it would have provided the benefit of indicating to the user what folder contains or is about without the user wasting additional time searching through the folder to determine the contents of the folder. Therefore, the user can name the folder based on the scheduled name and/or time of associated files stored in the folder.

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Thus, in conjunction with Fields, Lazaridis, and Wildfire, the cited references discloses the ability for the matching media content to be displayed at its scheduled time wherein the content is published into a folder that is named by the user to correspond to the content's scheduled data and time to be displayed.

11. Claims 7, 9, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fields et al. (hereinafter Fields), U.S. Patent No. 6,128,655 issued October 2000, in view of Lazaridis et al. (hereinafter Lazaridis), U.S. PGPub 20030026231 published 2/6/2003, and in further view of Wildfire ("FTP Tutorial: Using FTP Explorer") published early as of 16 December 2000, pages 1-5 in further view of Matsumoto et al. (hereinafter Matsumoto), U.S. Patent No. 6,763,334 filed 12/9/1999 and issued July 2004

As per dependent claims 7, and 9, Fields, Lazaridis, and WildFire fail to specifically disclose the scheduled time is a timeslice having a start time and an end time and scheduling the matching media content to be removed at a second scheduled time. However, Matsumoto teaches arranging delivery of advertisements over the Internet, whereby an ad banner campaign is negotiated for a start and end period of time of published ads accordingly (Matsumoto Abstract, column 5 lines 12-22, 55-67, column 6 lines 1-8, especially column 7 lines 1-8, also Figure 3 item 23, and Figure 5 – "Campaigning Period" and "Copy and Layout of advertisement"). It is noted that the scheduled inputted start/end period of time can be reasonably interpreted as start/end time "attributes" associated with the ad, and that said ad is published between said

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scheduled start/end times, after which said ad is removed accordingly. It would have been obvious to one of ordinary skill in the art at the time of the invention to apply Matsumoto to Fields, providing Fields the benefit of providing for publishing scheduled banner ad campaigns (e.g. to Fields's Figure 4B banner ad), pending agreement and policy approval, therefore facilitating sales.

As per dependent claim 18, Claim 18 recites similar limitations as in Claim 7, and is rejected under similar rationale.

### ***Double Patenting***

12. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

13. Claim 1-4, 7-20, 22-24, and 39 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-8,

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11-12, 17-21, 23, and 25-32 of copending Application No. 10/944143. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are not patentably distinct from each other because they are obvious variations of each other being substantially similar in scope and they use the same limitations, using varying terminology. Both applications discuss retrieving content from a plurality of content providers, verifying the structure and syntax/format of the content, and scheduling the content to be displayed.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Response to Arguments***

14. Applicant's arguments with respect to claims 1, 12, 20, and 39 have been considered but are moot in view of the new ground(s) of rejection.

Arguments addressing in regards of the new limitations of Claims 1, 12, 20, and 39 brought forth in the amendment of *scheduling the matching media content to be displayed, the scheduling comprising; a scheduled time for the display of matching media content, a scheduled priority for the display of matching media content within a timeslice, and a scheduled locale for the display of matching media content, wherein the scheduled locale indicates the country or geographic region in which the content is to be displayed* has been viewed the new ground of rejection of 35 USC 103(a) under new references using Lazardridis et al.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Faber whose telephone number is 571-272-2751. The examiner can normally be reached on M-F from 9am to 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephen Hong, can be reached on 571-272-4124. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/David Faber/  
Examiner, Art Unit 2178

	/CESAR B PAULA/ Primary Examiner, Art Unit 2178
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